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ABSTRACT

The increased presence of drugs and weapons in schools has forced school officials to step up searches of students, lockers, and school property. The landmark case of "New Jersey vs. TLO" set standards concerning reasonable suspicion and reasonable searches. School officials must be familiar with recent court opinions on student searches, use good judgement as to the application of reasonable suspicion, and avoid careless or whimsical applications of student searches. If evidence is found, it is important that contraband materials be locked in a secure place where the chain of custody of the evidence is known and limited. Extreme caution must be exercised in the case of strip searches, since such searches are too instrusive for most courts to sanction and arouse aversion in most communities, besides having been vociferously criticized by the American Civil Liberties Union and parents' organizations in specific instances. The apparent legality of the use of dogs to detect drugs varies within different federal circuit courts. School officials should check to see what guidelines their federal circuit courts recommend. While voluntary drug testing may be permitted, mandatory testing appears to be outside the scope of the law. The use of metal detectors as a search tool may be permissible if certain regulations are followed. Every school should have a conduct policy and a search and seizure policy spelled out exactly as to reasonable suspicion and reasonable search practices. Four resource organizations and nine references are given. Two newspaper articles are reproduced, one on student searches, the other on the use of dogs for drug detection. A short paper by Justice Stanley Mosk on "School Safety and the Law" is also included. (PPB)

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STUDENT SEARCHES & THE LAW

NSSC RESOURCE PAPER

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STUDENT SEARCHES & THE LAW

With the alarming increase of drugs and weapons on American school campuses, teachers, administrators and other school officials have, of necessity, stepped up their efforts to search lockers, other school property and, sometimes, students themselves. Several disputed searches have been brought to state courts, and a few, most notably the 1985 landmark case of New Jersey v. T.L.O.,[1] have been settled by the U.S. Supreme Court.

Despite court-imposed safeguards on students' constitutional rights, schools still have greater leeway in conducting searches than police officers. In many cases, law enforcement officers must have a warrant to conduct a search and must meet a "probable cause" standard that incriminating evidence will be found. The Fourth Amendment, which protects citizens against unlawful and unreasonable searches, originally set forth this "probable cause" standard. School officials, however, have successfully demonstrated to the courts that such a stringent requirement would seriously impair their ability to maintain discipline and a safe school environment. Because of this, they are only obligated to meet a "reasonable suspicion" standard.

Court decisions have helped define what constitutes an appropriate search based on reasonable suspicion and have helped guide school administrators, teachers and security agents to conduct searches in a manner that is simultaneously nonintrusive and respectful of students' constitutional rights. Still, each new case poses its own particular nuances, and no school official, even if carefully following the standards established by T.L.O., can be guaranteed that a student may not sue, and possibly win his case in court.

However, court cases since T.L.O. have generally upheld the legality of searches, provided they were handled consistent with T.L.O.'s standards. A look at the basic guidelines for student searches set down by the T.L.O. decision and the cases that followed it is helpful. These guidelines comply with and clarify the "reasonable suspicion" standard:

* Searches must be based on reasonable suspicion that the student has violated school rules or the law.

* Those responsible for conducting the search must be able to clearly state which school rule or law has been violated.

* The information must be recent and credible and must connect the student to the violation.

* Searches must be reasonable in scope in light of the age and sex of the student and the nature of the infraction.

Conversely, school officials, though not obligated to meet the law enforcement "probable cause" standard, may be liable for violating students' constitutional rights if they:

* Knew or should have known their actions violated students' rights, or

* Acted with malicious intent to deprive students of their rights.

School officials, therefore, must be familiar with students' basic constitutional rights as well as current court opinions on student searches.

WHAT RECENT COURT CASES HAVE RULED

Post-T.L.O. opinions have followed a common-sense approach to upholding or denying the legality of student searches. School administrators, teachers and security guards who find themselves in the position of conducting a student search should above all use good judgment and not search a student's belongings or person without meeting the "reasonable suspicion" standard. A few recent cases, similar in circumstance to the T.L.O. scenario, provide further illustration.

In a California Court of Appeals case, In re Robert B.,[2] a high school security guard saw two students exchange money near the school's science building. These students had been involved with marijuana before, raising the guard's suspicions as to their activities. He asked the students to go to the vice principal's office, and on the way, saw one boy pull a pack of cigarettes out of his pocket and slide it in his jacket sleeve. Inside the office, the guard examined the contents of the boys' pockets, including the cigarette pack. The pack contained what proved to be 13 hand-rolled marijuana cigarettes.

In ruling to uphold the search, the court wrote in part: "Inasmuch as Robert was suspected of possession of a controlled substance, it was reasonable to search his pockets and the cigarette box he had apparently attempted to hide."

Another related case was decided by a different panel of the California Court of Appeals. In In re Bobby B.,[3] a high school dean, during morning rounds of the campus, found two boys in the restroom without passes. When the dean asked the boys what they were doing, one boy, Bobby, hesitated nervously in his answer. Because the dean knew drug use was common in the restrooms, and because the boys had no passes and Bobby obviously was nervous, he asked the boy to empty his pockets. Inside Bobby's wallet were two marijuana cigarettes and a packet of cocaine.

Like the first case, Bobby's case went to an appellate court, which upheld the search. The court wrote: "(The boys') illicit

conduct would arouse suspicions of a reasonably prudent person to believe that in fact narcotic activities might be taking place."

Meeting the "Two-Prong" Test

These cases share characteristics which helped them weather intensive legal scrutiny. First, school officials focused their searches on a few individuals, whose specific actions (the exchange of money, lack of passes, and nervousness) provided reason for suspicion. Second, the officials conducting the searches limited the scope of their investigation and searched only the students' outer clothing. To use the U.S. Supreme Court's phraseology in the T.L.O. case, both cases meet the "two-prong test" of a search that is "reasonable in its inception" and "reasonable in scope."

ILLEGAL SEARCHES

Under no circumstances should school officials be careless or whimsical in conducting student searches. In 1985, a Florida District Court of Appeals ruled unconstitutional a search which uncovered a marijuana cigarette.[4] In this instance, a teacher saw two students walk to an area of campus considered "off-limits." The students exchanged an unidentified item and one student held an unlit cigarette, later found to be tobacco. The teacher took both students to the dean's office and did a pat-down search of the students' clothing. This search produced no contraband. The teacher told the students to place their belongings on the table, and inspected the items. Inside one of the student's wallets was the marijuana cigarette.

This search was unanimously found by the court to be unwarranted because of the vagueness of the teacher's suspicions (the teacher did not smell marijuana when first seeing the students), the students had not been involved in drug activity before, and the area considered "off-limits" was not posted as such and was not universally known to be off-limits to most students. Finally, the search was ruled unreasonable because the school's general disciplinary action against students with cigarettes was simply to take the cigarettes away.

LOCKER SEARCHES

T.L.O. answered many questions for school officials, but it left just as many unanswered. For example, T.L.O. dealt with the legality of a search of a student's purse, but what about a student's desk, locker, car, and body?

So far, courts have usually followed T.L.O. standards for locker searches. A 1986[5] case from the Washington Court of Appeals provides a good example. This case began when Vicki Sherwood, vice principal of a Seattle high school, was tipped off by a student that another student, Steven, sold marijuana from a box in a locker not assigned to him. The tipster's credibility was greatly enhanced because he was able to point to a particular

student, a specific locker and some details about the suspected crime. A more vague tip, from either a student or teacher, might not have justified the search. Sherwood suspected Steven on her own because she had seen him at a place believed by school officials to be a drug dealing site. In addition, she had heard reports just the previous week that Steven was selling drugs. That report prompted a search of his assigned locker, which revealed no illegal substances.

Sherwood and the school principal opened the locker identified by the tipster. Inside was a blue metal box. They called Steven from class and threatened to call police if he didn't open the box. He did, disclosing hallucinogenic mushrooms. Police were called, and Steven was arrested.

Steven claimed unsuccessfully that the mushrooms should be excluded from the evidence because the locker and box searches were illegal. But the Court of Appeals affirmed his conviction, applying T.L.O. standards. The detailed report from the student informant, along with Sherwood's own articulable suspicions, justified the search. Because the search was limited in scope to the locker and box, the only items mentioned in the tip, the search was not considered more intrusive or extensive than necessary.

Students have trouble claiming locker searches are illegal because courts have generally ruled students have a diminished expectation of privacy on school campuses and also because lockers are technically school property. Large school districts are with increasing frequency protecting themselves by writing policies in which they assert ultimate control over lockers and reserve the right to search them for discipline and safety reasons. Courts generally accept the validity of these policies, if they are fair and given to students in writing, and thus defeat most students' claims of control over their lockers. Smaller school districts are well advised to follow this lead and protect themselves as well. (Some sample written policies are included at the end of this NSSC Resource Paper.)

General locker searches for health and safety reasons are more likely to be upheld by courts than targeted searches of lockers when there is little evidence to justify them. Benjamin Sendor, an attorney and assistant professor of public law and government at the University of North Carolina's Institute of Government, warns school administrators not to abuse their authority to conduct locker searches.

"School officials should have strong reasons to suspect that searching a locker will disclose evidence of illegal possessions or activity," Sendor says. "Administrators should not take the attitude of 'Let's see if Johnny has any drugs in his locker today.'"

These high standards for calling locker searches should also apply to searches of students' cars on school grounds, students' clothing and other possessions.

When Evidence Is Found

How should school administrators respond if they do discover illegal substances or weapons that could be used in a criminal proceeding? Sendor advises that the contraband materials be locked in a secure place where only the school principal and perhaps one other person have access to maintain a "chain of custody."

"The legal concept of a 'chain of custody' means that school officials must be able to prove exactly who had access to the materials," Sendor notes. "After it is taken from the student's hands, you must know who has had access to it."

Sendor also suggests that if school officials seize any weapon or illegal substance, they should call law enforcement officers and hand the items to them, even if no criminal proceedings will result. "People should never flush marijuana or other drugs down the toilet or toss a gun or knife into a river," he says. "Although state laws vary, in many states officials who fail to hand weapons or drugs over to law enforcement may be concealing evidence and therefore breaking the law."

There are other good reasons to follow this practice, Sendor adds. "A school needs to be consistent in its approach to these matters, and if on one occasion a principal looks the other way and throws a marijuana cigarette out, the next time the student will expect the same treatment. Or, if one student's drugs are thrown away and another's given to the police, the school also leaves itself open to a discrimination lawsuit. Uniformity is important."

STRIP SEARCHES

Although schools are generally free to search students' lockers, provided administrators follow T.L.O. standards, strip searches are another matter. Courts have consistently upheld students' claims that strip searches violate their rights. They are simply too intrusive for most courts to sanction, especially given the students' young age. Only in dire cases, such as if a student is suspected of possessing a dangerous drug, like heroin, or a weapon, might strip searches be upheld. Even then, school officials would be wise to call in law enforcement officers, who are obligated to show "probable cause" for this extreme measure. Courts would likely demand this higher standard for student strip searches, so the additional caution is well founded.

For example, in 1985 a federal court ruled in favor of 15-year-old Ruth Cales,[6] who, after being caught in the school parking lot during classtime by a security guard, was taken to an assistant principal's office and had her belongings searched.

Ruth had lied to the guard about her name, raising his suspicions. The only questionable articles discovered in Ruth's purse were several readmittance slips improperly in her possession. Still, she was asked to turn out her jeans pockets. Ruth not only did so, but took her jeans completely off. She was then asked to lean over to see if she had hidden anything in her bra. Again, no illegal substances were found.

The court ruled that Ruth's strange behavior was insufficient reason to conduct so intrusive a search. "Plaintiff's conduct was clearly ambiguous. It could have indicated that she was truant, or that she was stealing hubcaps, or that she had left class to meet a boyfriend,"[7] the court said. There were no specific, articulable facts to assume Ruth had anything illegal on her.

The American Civil Liberties Union (ACLU) is, not surprisingly, against all strip searches as a matter of policy and consistently challenges the legality of other less intrusive searches as well. In May 1986, the ACLU sued the Michigan School for the Deaf after two female students were asked to strip (one completely, one down to her underwear) during drug searches in the bathrooms in October 1984.

The ACLU has been particularly active in Michigan pursuing this and another case involving Davison High School. The organization vociferously criticized the high school for allegedly conducting frequent strip searches, a charge that school principal Robert Slevak has refuted. Slevak was quoted in a news article stating the issue had been blown out of proportion and that strip searches were rare events on campus.

This heightened sensitivity to strip searches is echoed throughout the country. For example, in the summer of 1986 the Marlboro Township (New Jersey) Board of Education quickly rescinded its decision to establish a strip search policy after students, parents and the ACLU threatened legal action. At the same time, several school districts in the state, as well as in New York and Connecticut, were drafting policies making it easier to conduct searches of lockers and students' property.

An editorial from a New Jersey newspaper in June 1986 reflected that community's struggle to balance the need for appropriate search policies and its aversion to the idea of strip searches. While acknowledging that "serious problems" necessitate "serious measures," the editorial voiced its concern that school officials exercise vigilant restraint just as they exercise their responsibility to protect school campuses.

SEARCHES BY PROBATION OFFICERS

Students who are placed on probation by the court lose many of the protections and privileges enjoyed by their classmates. Under terms of their probation, students must agree to searches for virtually any reason.

A sample probation "search term" might read as follows: "You shall now consent to a search at any time by a law enforcement officer or your probation officer of your person, possessions, vehicle and area where you sleep."

Many terms of probation also assert that probationers are responsible for attending school, making progress toward graduation, and behaving themselves. In the best possible scenario, probation officers will establish contact with school administrators to remain alert to a probationer's progress and behavior. If school administrators know a student is on probation but haven't been contacted by the probation officer, they should call the officer personally to make this valuable connection.

If school administrators suspect a probationer of violating school rules and believe a search is needed, they should, if possible, call the student's probation officer. School administrators should allow the probation officer, who is trained to handle potentially violent situations and who has sweeping search powers, to conduct the needed search.

DOGS ON CAMPUS: IS A SNIFF A SEARCH?

Using dogs to detect drugs in school is a delicate task, since the U.S. Supreme Court has refused to hear two major federal circuit court cases on the subject. This forces school administrators to interpret the complicated and conflicting court rulings: Doe v. Renfrow,[8] a liberal reading of schools' authority to conduct dog sniffs, and Horton v. Goose Creek,[9] a ruling more protective of students' rights.

The Doe Case: Liberal Approach to Dog Sniffing

In 1981, the Seventh Circuit (Illinois, Indiana, Wisconsin) upheld the legality of using dogs to detect drugs throughout the schools in Doe v. Renfrow. In fact, in this case the court ruled that a sniff of a student was not a search, and therefore was free from Fourth Amendment considerations of due process. Dogs had sniffed more than 2,700 junior and senior high students, and had "alerted" to five students several times. These five were thoroughly searched. In addition, four junior high school girls were strip searched. No drugs were found by these searches.

According to Doe, the use of the dogs was considered reasonable because of numerous drug incidents at the school, the students' apparent fear of disclosing who was using or selling drugs, and school administrators' mounting frustration with the problem. The examination of the students' possessions was declared a search, the court said, but that too was justified by the continued response of the dogs to those students. The strip searches, however, were unreasonable in the court's view and reflected a serious invasion of students' constitutional rights.

The Horton Case: Cautious Approach to Dog-Sniffing

School officials should also look closely at the 1983 federal Fifth Circuit case (Louisiana, Mississippi, Texas) of Horton v. Goose Creek. The Goose Creek Independent School District arranged for trained dogs to sniff for more than 50 substances on campus, including alcohol and drugs. Students were informed about the "canine drug detection program," and dogs were taken on rounds of various schools on a random and unannounced basis. They sniffed lockers, cars and students themselves.

If a dog "alerted" to a substance, the student's outer garments and possessions were inspected in an administrator's office. A positive reaction from the dog to an automobile led to the student owner being asked to open the doors and the trunk. When a dog "alerted" to a locker, school officials opened and searched the locker without the student's consent.

Some students who triggered alerts brought the case to court, claiming the school violated their Fourth Amendment rights of due process and protection against unreasonable searches.

The Horton case contains two significant opinions: First, dog sniffing of students' lockers and cars is not a search (although school officials may not open and search them based only on dogs' reactions unless they can prove the dogs' responses are reasonably reliable). Second, sniffing students' bodies is unquestionably a search and is only constitutional if school officials have "reasonable cause" based on "individual suspicion." In other words, dogs may only be used to sniff a student if there is reasonable cause to believe that a specific student is in control of contraband.

Guidelines for dog sniff searches must be fashioned with your school attorney's help. If you live in a state controlled by the Fifth (Doe) or Seventh (Horton) federal circuit courts, you must follow their guidelines. Only the Ninth federal circuit court jurisdiction[10] (Alaska, Arizona, California, Guam, Hawaii, Nevada, Oregon, Washington) holds that sniffs of objects or persons is a search, which must be based on reasonable cause. Except in the Ninth circuit, the following general rules should be kept in mind:

* Schools may use dogs to sniff lockers and cars without Fourth Amendment restrictions.

* A dog's alert is never enough to warrant a student strip search. Strip searches conducted under these conditions leave school administrators open to liability for violating students' clearly established constitutional rights.

* Reliability of sniff dogs must be well established before use in schools. Test results on individual dogs will be required if the case proceeds to court.

* Except in the Seventh and Ninth circuits, students' outer clothing may be searched for contraband after the dog's alert.

DRUG TESTING

Many schools have successfully adopted voluntary drug testing programs. These tests are given with students' consent, so there is no issue of illegal search and seizure. Only one case involving mandatory, non-consensual student drug testing has emerged in a state court. In Odenheim v. Carlstadt-East Rutherford Regional School District[11] (New Jersey, 1985), the court struck down the school district's policy to insist upon annual physical examinations, including urine testing for traces of drugs, of all students enrolled in the district. As written in the policy, these examinations were designed to "identify the existence of any physical defects, illnesses or communicable diseases. These examinations will also help to identify any drug or alcohol use by the pupils."

A group of students and their parents challenged the policy in August 1985 and, one month later, was granted a preliminary injunction against the schools to withhold these examinations.

The defendants argued that the urine samples were tested for a variety of medical conditions and that no civil or criminal sanctions were to be imposed if a student's urine tested positive for narcotics. In addition, students' test results would remain confidential and be maintained separately from mandatory school files. Finally, the school district argued that because drug use is an illness, it is beyond the parameters of search and seizure laws.

However, the court did not accept this logic, and ruled that the "policy is an attempt to control student discipline under the guise of a medical procedure, thereby circumventing strict due process requirements."[12]

In applying T.L.O. standards, the court found the policy violated students' Fourth Amendment rights to be free of unreasonable search and seizure, as well as their rights of due process, privacy and personal security.

METAL DETECTORS AS A SEARCH TOOL

Detroit, a city with a dramatic problem of weapons on campus, has periodically conducted weapons searches on campuses with hand-held metal detectors. This began in 1984, when a school policy went into effect authorizing random and individualized searches. In the school year 1985-86, 59 guns were recovered in Detroit's schools using all search methods, including metal detector sweep searches, according to Detroit Board of Education figures.

In the midst of an ACLU challenge to the searches, U.S. District Judge Avern Cohn developed new regulations covering weapons

sweeps which were more protective of students' rights, but at the same time increased penalties for those found with guns. Under these guidelines, parents would also be prosecuted for negligence for allowing their children to obtain guns.

Judge Cohn's regulations include the following:

* Students and parents must be given written notice that metal detector searches will occur;

* Students must have an opportunity to remove metal objects in lockers that could set off the detectors;

* Schools are forbidden from using detectors unless school officials suspect students have weapons or if there are several incidents of violence or weapons at school, and

* School personnel must conduct the searches, and three signals from the detector are needed before a personal search of a student may take place in private.

Deborah Gordon, a volunteer attorney for the ACLU in Michigan who has been involved with other search cases on the ACLU's behalf, hopes Detroit won't set a precedent for other cities to begin using metal detectors to uncover weapons on campus.

"It sounds good on paper but doesn't get to the root of the problem," Gordon says of metal detectors. "Metal detectors are expensive to use and logistically complex. Some large schools may have dozens of doors. Are you going to have someone standing at every door? It's also disruptive to the school day. Besides, from 1984 to fall 1985, when school security used their routine, individualized search techniques, they found 77 guns. With metal detectors used on more than 35,000 high school students, they only found six."

Frank Blount, chief of security for Detroit's public schools, says that according to the judge's regulations, hand-held metal detectors are meant to be used against targeted groups of students who officials have probable cause to believe may have guns and other weapons. He adds that most of Detroit's citizens support using metal detectors to help deal with a serious problem of weapons on campus.

"These searches are humiliating for all students. We're not insensitive to that," Blount says. "But extraordinary events demand extraordinary measures. I think we may see more metal detectors used in other cities. I know I'm getting calls from all over the country about it."

CONCLUSION

Schools without a conduct code and/or search and seizure policy are well advised to draft one in conjunction with a school attorney and give a copy to students to sign and keep. These

policies should spell out exactly what kind of behavior is expected of students, and what consequences they may expect to face if they violate school rules or the law by possessing drugs, weapons or other contraband.

Use the following sample policies as a guide, but closely review the general guidelines on page 2 of this resource paper -- they reflect the latest thinking from state courts and the U.S. Supreme Court on student searches.

Don't try to innovate new search practices; familiarize yourself and your staff with the cases explained in this paper and the legal reasoning behind court decisions. This will help you make intelligent, informed judgments about searches at your school.

RESOURCES

NOLPE (National Organization On Legal Problems of Education)
Thomas N. Jones, executive director
3601 Southwest 29th
Suite 223
Topeka, KS 66614
913/273-3550

The Law, Youth and Citizenship Program
New York State Bar Association
Dr. Eric S. Mondschein, director
1 Elk Street
Albany, NY 12207
518/463-3200

(Law-related education, teacher training, publications, conferences, mini-grants awarded for law-related education programs)

National Association of Secondary School Principals
Ivan Gluckman, general counsel
1904 Association Drive
Reston, VA 22091
703/860-0200

National Alliance for Safe Schools
Dr. Robert Rubel, director
501 North Interregional
Austin, TX 78702
512/396-8686

(Two articles published by the Alliance are of particular interest: Interviewing and Interrogating, Item 309 on the organization's order form, $3; and Legal Issues: Schools and the Law, Item 403, $2.50.)

REFERENCES

1. New Jersey v. T.L.O. 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985)

2. In re Robert B. 218 Cal.Rptr. 337 (Cal.App.2d Dist. 1985)

3. In re Bobby B. 218 Cal.Rptr. 253 (Cal.App.2d Dist. 1985)

4. Sendor, Benjamin, "Learn When You May (And May Not) Search Students," The American School Board Journal (May 1985)

5. State v. Brooks 718 P.2d 837 (Wash.App. 1986)

6. Cales v. Howell Public Schools 635 F.Supp. 454 (E.D. Mich. 1985)

7. Ibid.

8. Doe v. Renfrow 631 F.2d 91 (7th Cir. 1980) cert. denied, 451 U.S. 1022 (1981)

9. Horton v. Goose Creek Independent School District 690 F.2d 470, at 481 (5th Cir. 1982)

10. United States v. Beale 674 F.2d 1327 (9th Circ. 1982); United States v. Solis 536 F.2d 880 (9th Circ. 1976)

11. Odenheim v. Carstadt-East Rutherford Regional School District 211 N.J.Super 54 (1985)

12. Ibid.

Rights vs. discipline:

Searching students for drugs in the country's classrooms

The Washington Post

Since school opened in Hawkins, Texas, this fall, more than 300 students, some as young as 11, have handed over urine samples to be screened for traces of illegal drugs. The drug-testing policy — among the strictest in the country — applies to band members, student council leaders, athletes and others who want to participate in extracurricular activities.

Three-quarters of the students above fifth grade have been tested. And every two weeks, 10 or 12 students are randomly selected for another round of testing. "We believe that keeps them fairly honest," said Supt. Coleman Stanfield. "Society has a problem with drugs right now. School districts are a part of that problem."

Hundreds of urine samples collected in this small Texas school have not turned up any drug users, but the policy has raised a broader question: how to balance the rights of students with the need to maintain order and discipline. At a time when the nation is intent on stamping out drug abuse and in a legal environment shaped by two Supreme Court decisions restricting student rights, the balance is being tested frequently.

While the Supreme Court rulings make clear that students enjoy fewer constitutional protections than adults, there have been widely varying interpretations of what kinds of actions school officials may take to maintain order.

When a seventh-grade girl reported $10 missing at her Gainesville, Fla., school a few weeks ago, 22 classmates were told to strip down to their underwear and submit to a search.

Girls were taken to a locker room, where a female physical education teacher searched them, according to Alachua County school officials. A Gainesville police officer assigned to the school searched the boys in a storage area off the classroom. The searches turned up no missing money.

"We were just outraged," said Cindy Cowen, whose 12-year-old daughter, Angie, told her about the search that night after school. "You just don't think someone's going to strip-search kids for a $10 bill."

School officials say the search violated policy because the principal was not notified. The teachers involved have been reprimanded. And the police officer is facing disciplinary action from his department.

The incident illustrates the confusion over school authority, an area that has officials clamoring for guidance. Requests have come in for nearly a million copies of an anti-drug booklet released by federal education officials in September. The book cites a handful of schools that have reduced drug problems, including a New York City school that stationed security guards and faculty outside each bathroom and organized "hall sweeps" to monitor student activity during class periods.

John P. Walters, special assistant to Education Secretary William J. Bennett, said that when schools around the country were surveyed to identify effective drug policies, "We did not find a single successful school ... that didn't have tough policies." Drug testing and searches are not always necessary, he said, but if a community thinks that they will help, they should be used.

The Supreme Court early last year gave school officials broad authority to search students suspected of carrying weapons, dealing in drugs or violating school rules. The 6-to-3 decision involved a 14-year-old New Jersey girl whose purse was searched by school staff after she was discovered smoking a cigarette in the school lavatory.

"Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: Drug use and violent crime in the schools have become major social problems," wrote Justice Byron R. White for the majority. "Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures. . . ."

In a concurring opinion, Justice William Lewis F. Powell Jr. further emphasized the special characteristics of schools "that make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting. In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally."

The question of when students can be legally searched comes up most frequently in relation to drug possession. And the recent anti-drug sentiment has prompted school districts across the country to review and, in many cases, toughen search and surveillance policies.

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Drug-sniffing dogs to search schools

By DIANE FRIES
Staff Writer

Drug-detecting dogs will be regular visitors to Washington County high schools this year in a program to sniff out illegal substances stashed in lockers and cars.

The Board of Education last night authorized the Maryland State Police to begin regularly scanning the hallways and parking areas of the county's seven high schools with their specially trained canines.

Jim Lemmert, director of supporting instructional services, told board members the program should make students think twice before bringing drugs to school.

"The dogs will be used primarily in schools for the purpose of deterrence and not criminal prosecution," Lemmert said. "This is an effort on the part of the educational system to notify the community that we will use whatever resources to keep schools free of illegal drugs."

Lemmert said the vast majority of students aren't abusing drugs, but the school system is obligated to provide an educational environment free from illegal substances.

"I don't think we have a major problem in the schools, but I think there is a real problem in the community that can spill over into the schools," he said.

Lemmert said dogs will scan county high schools over the next two weeks to make sure they are "clean" before students return to classes.

Students, faculty and supporting staff will be told at the beginning of the school year that the trained dogs will be used periodically to scan the building, grounds and vehicles on or adjacent to school grounds.

Lemmert said the principal will be notified before dogs are taken into the school, but students will not be given specific dates when the scannings will occur.

"We will inform students of the possibility, but not when they're coming," Lemmert said.

Lt. David Yohman, commander of the Maryland State Police barracks in Hagerstown, said one school would probably be scanned about every other week but there would be no regular schedule. It takes about 15 minutes to scan a school, he said.

The school principal will accompany the Maryland State Police officer during drug-detection scans.

Dogs will not be used to scan any person, but articles of clothing, book bags, boxes and other items can be scanned when they're not in the person's possession. Dogs will not scan classrooms.

Lemmert said if a dog indicates that a suspected controlled dangerous substance is in a student's locker, the principal will ask the student to open that locker.

If a student refuses, the school official, in the presence of the Maryland State Police officer and any other witnesses, will open and search the locker. The police officer can not open or search a locker without proper consent or a search warrant.

Any suspected illegal substances seized will be turned over to the state police for analysis.

The principal will follow standard board of education policy and procedures when any drug is found on school property.

Vehicles on or adjacent to school grounds will be scanned for drugs in a similar manner. But because of recent legal interpretations, a police officer is allowed to enter a vehicle without a search warrant for probable cause.

Lemmert said it will be decided later if the program will be used in middle schools. Drug-detecting dogs have been used in at least two other Maryland county school systems, he said.

School safety and the law

By Justice Stanley Mosk

School officials must be given appropriate authority over pupils on school grounds, during school hours, in order to maintain orderly, healthy, peaceful school environments in which to teach and learn.

A number of years ago–more than I like to admit–I sat as a Superior Court judge and for a limited time heard juvenile cases. The proceedings were informal, almost casual. I as the judge, the juvenile, his parents, a probation officer, sometimes a teacher or principal, sometimes a minister, would all sit around a conference table and discuss the youngster's problems. There was a friendly, cooperative, non-combative attitude by everyone.

First the probation officer would relate the offense committed. Then I would ask Johnny for his version, which was not significantly different in most instances. Then I would ask the parents, the teacher and the minister for their views on what we should do with Johnny. And out of the discussion would generally come a proposed program, a consensus, to which the juve-

Shootings Defied Reality
Witnesses Were Stunned as Incident Unfolded
CENTRAL HIGH ARRESTS
Sweep nets 20 stu
School crime figures rise during past year
Assaults on L.A. teachers top 1 a day
Top court gives boo
to school discipline
Warrants not required for searches of students

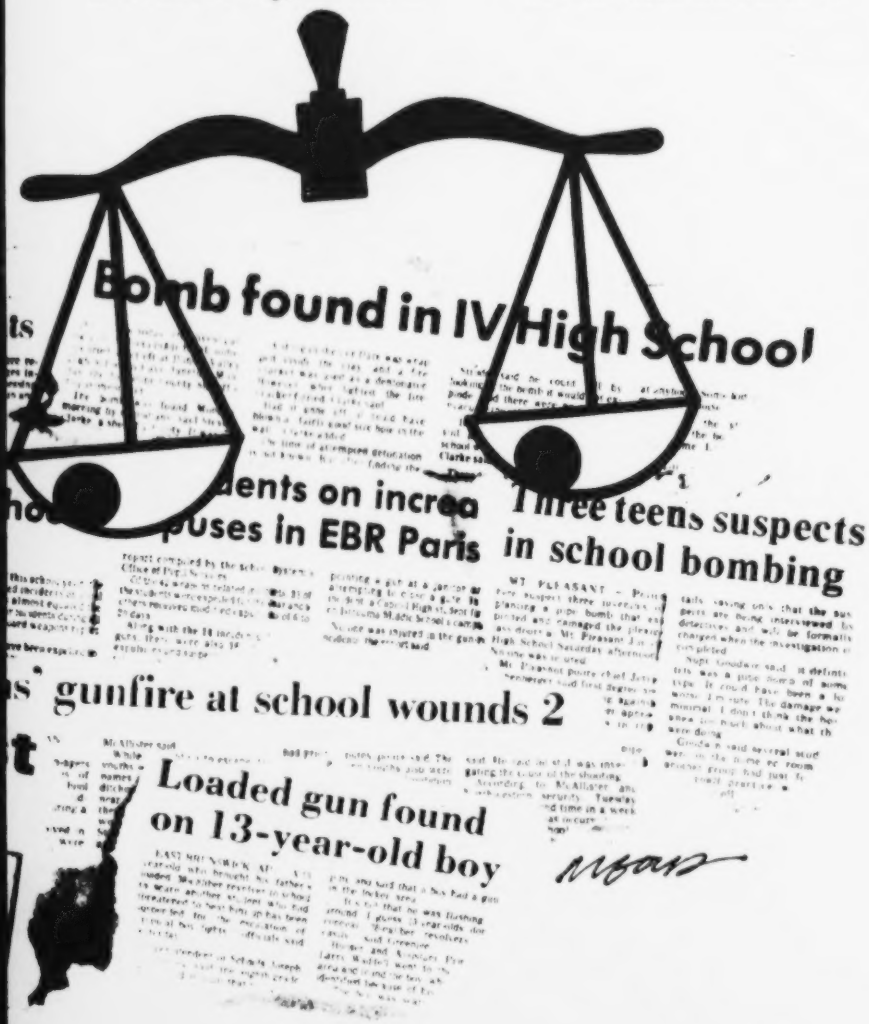
Stanley Mosk is an associate justice of the California Supreme Court.

This article is the text of a presentation at the Ninth Annual Inservice Workshop on "Crime, Violence and Vandalism Affecting Schools," sponsored by the Los Angeles County Office of Education, February 19, 1985.

nile would invariably agree. No court reporters, no attorneys, no examination and cross-examination, no appeals.

Then along came some cases out of the U.S. Supreme Court, starting with the seminal case of *In re Gault*, which declared that juveniles had many of the constitutional procedural protections given to adult criminal defendants. The fact that the Fourth Amendment was not originally used to constrain school officials does not preclude its use as a safeguard of the rights of students today. Any theory denying the protections of the Constitution conflicts with the Court's language in the 1969 case of *Tinker v. Des Moines Independent Community School District* (393 U.S. 503). The Court in *Tinker* invalidated a regulation prohibiting students from wearing armbands to protest the war in Vietnam on First Amendment grounds; the Court's holding, however, addresses the broader question of the applicability of the Constitution in schools. It rejected both the idea that schools may be operated as "enclaves of totalitarianism," and the premise that school officials have "absolute authority over their students." "Students in schools as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the state must respect..." The *Tinker* Court contended that the protection of constitutional freedoms is even more important in schools than elsewhere.

Now we have youngsters appearing in juvenile court with attorneys, who cross-examine the probation officer and witnesses, and who advise their youthful client to assert his constitutional right to remain silent. Today juvenile proceedings are only slightly different from full-blown criminal trials.


Bomb found in IV High School
Three teens suspects in school bombing
gunfire at school wounds 2
Loaded gun found on 13-year-old boy

Perhaps I am being unrealistic in my fond recollection of those good old informal days. It may be that we must all come to grips with the difference in juveniles today from 25 years ago. It is only in more recent times this permissive society of ours has seen the proliferation of truly serious crimes by young people, many of whom are using drugs, knives and guns.

When I personally handle cases now that involve brutal killings, I realize we are living in hazardous times: a *Dillon* case, in which a group of high school boys arm themselves, invade a marijuana grower's farm with the intent to harvest his crop, and end up killing the farmer; a young girl who kills her stepfather and then cuts up his body; a high school girl, a regular church-goer, who stabs to death a classmate who was elected over her for the school cheerleading squad. Terrible cases, but in their background all related to schools and school safety.

In courts, most of the legal problems concerning juveniles involve searches of one kind or another. The issue usually is whether the Fourth Amendment of the Constitution applies and, if so, whether it has been violated.

To refresh the recollection of those of you who have not read the Constitution recently, the Fourth Amendment protects individuals against unreasonable searches by agents of the government that intrude upon a reasonable expectation of privacy. If you or I are walking down the street and violating no law, the police officer on the corner cannot detain us on a mere whim and rummage through our pockets. That would violate the Fourth Amendment. The violation occurs at the moment he illegally searches us, and it does not become any less a violation if he should find some incriminating evidence in our pockets. In other words, an illegal search does not become legal because of what it turns up.

All of the foregoing is elementary, although you would be surprised at how many writers of newspaper headlines report a court decision on an illegal search as being based on a mere technicality. We must always remember that constitutional rights, our fundamental law, must never be reduced in

concept to a mere technicality.

What I have said thus far clearly applies to adults. Does it apply to juveniles and, particularly for our purposes today, to juveniles on school grounds?

A typical case raising the issue of constitutional rights in the schools might involve the following scenario. A high school student is summoned into the principal's office. Acting on the basis of an anonymous tip, the principal orders the student to empty his pockets–and he may use force if the student refuses to cooperate. A small amount of marijuana, or other contraband, is found and the student is prosecuted. The student will argue that the state obtained the contraband from a search which violated the Fourth Amendment and that the evidence should be excluded at trial.

The scenario has a number of possible variations. Elementary school, university and trade school students might also be searched. In addition to searches of the person, the search might involve a school locker, dormitory room or other property. The search might be conducted by a teacher, administrator, school guard or even a police officer. Drug detection dogs are sometimes used. Some incidents can be extreme. For example, one case in New York involved the strip search of an entire classroom of fifth-grade children in an unsuccessful attempt to locate three missing dollars. *(Bellnier v. Lund* (1977) 438 F.Supp. 47.)

Just as an aside, let me read excerpts from that New York case. On this particular morning, members of the fifth-grade class at Auburn's Lincoln Elementary School arrived at the classroom in their usual fashion. Each of the students entered the classroom and placed his outer garment in a coatroom located wholly within and accessible only from the classroom itself. The teacher of the class commenced a search of the class [for a missing $3] with the aid of fellow teachers and school officials.

The outer garments hanging in the coatroom were searched initially. The students were then asked to empty their pockets and remove their shoes. A search of those items failed to reveal the missing money. The class members were then taken to their respective restrooms, the girls to the girls' room and the boys to the boys' room. The students were there ordered to strip down to their undergarments, and their clothes were searched. When the strip searches proved futile, the students were returned to the classroom. There, a search was conducted of their desks, books and once again their coats.

The entire search lasted approximately two hours. The missing money was never located.

The New York court indicated that it was not unsympathetic with the teachers, but that this activity went beyond reason. In view of the age of the students and the extent of the search when drugs were not involved, the court said in good conscience it could not find the search reasonable. It cited the high court of New York State which declared *(People v. D.*, 34 N.Y.2d 490): "...although the necessities for a public school search may be greater than one for outside the school, the psychological damage that would be risked on sensitive children by random search insufficiently justified by the necessities is not tolerable."

The most recent word on this subject was contained in a U.S. Supreme Court opinion. Known as *New Jersey v. T.L.O.*, it was argued only last October and decided in January.

Very briefly, these were the facts in that case:

A teacher at Piscataway High School in Piscataway, N.J., observed Terry Lee Owens (the "T.L.O." of the case) and another student smoking cigarettes in the girls' restroom. Although smoking was permitted in designated areas of the school, it was prohibited in the restroom.

The students were taken before the assistant vice principal, but Owens denied that she had been smoking or that she smoked at all. The other student admitted she had been smoking in the restroom and was ordered to attend a smoking clinic for three days as punishment.

The vice principal asked Owens to speak to him in a private office. He then asked to look through her purse. Owens gave him the purse, and the school official immediately spotted a pack of cigarettes in the purse along with a package of cigarette rolling papers. He looked further into the purse and found a metal pipe, empty plastic bags, a plastic bag with marijuana in it, an index card reading "people who owe me money" followed by a list of names, and $40, primarily in one dollar bills. The school official called in the student's mother and the police.

After being taken to the police station, the girl admitted selling marijuana to other students and was charged with juvenile delinquency based on possession of marijuana with intent to distribute.

In the prosecution in the juvenile court of Middlesex County, N.J., the girl moved to suppress both the evidence seized from her purse and her statements to the police, claiming that the search was unconstitutional and that she had not knowingly waived her right to silence when she spoke to the police. The court denied the motion to suppress.

The juvenile was tried and adjudicated delinquent. The court imposed a year of probation, a term which she completed before the U.S. Supreme Court even heard arguments in the case.

The Appellate Division of the New Jersey Superior Court affirmed the ruling on the purse search, but ordered the case remanded on the question of whether the juvenile was denied her right to counsel before interrogation.

Before the criminal proceedings, she successfully challenged in the state Superior Court her suspension from school for the same incident. This court ruled that the search of her purse violated the Fourth Amendment.

The New Jersey Supreme Court agreed with the chancery division's conclusion and it reversed the Owens conviction in *State in Interest of T.L.O.*, 463 A.2d 934 (1983), by a 5-2 vote. The opinion held that the Fourth Amendment applies to searches by school officials. At that point, the case went all the way to the U.S. Supreme Court.

It is rather difficult to get a handle

on the High Court's ultimate decision on *T.L.O.* On the one hand, the court did say that the Fourth Amendment does apply to school students. That means, in the abstract, that students are protected from unreasonable searches and seizures.

But, on the other hand, the court held that a search is justified, according to Justice Byron White, when there are "reasonable grounds" to suspect that it "will turn up evidence that the student has violated either the law or the rules of the school." He added that the search must not be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."

The Supreme Court reversed the New Jersey decision, calling the latter's view of reasonableness to be "crabbed," but unfortunately we have been given few clues as to what set of facts and what searches the High Court justices would consider reasonable.

Justice Stevens wrote an ascerbic dissent, in which he declared: "For the Court, a search for curlers and sunglasses in order to enforce the school dress code is apparently just as important as a search for evidence of heroin addiction or violent gang activity..."

I do not think the court said anything like that, but this has led to some skepticism among critics. Professor Yale Kamisar of the University of Michigan was quoted as saying: "The Court is telling school authorities 'We're sympathetic with your problems; take the ball and run with it,' and it's unclear how far they really can run...I don't know how anyone can figure out what this opinion says."

I might add that I do not consider the Stevens dissent to be fair comment on the majority opinion. However, extremism in dissenting opinions is nothing new. Indeed, it is par for the course, as I well know–being a frequent dissenter myself.

All of our discussion must not center on the rights of students who are suspected of criminal activity or violation of school rules. That is a more dramatic aspect. But we must realize that innocent, law-abiding students have a right to protection from crime and criminals.

Consider the case of Madelyn Miller, a 19-year-old junior at the State University of New York. She was confronted in the laundry room of her dormitory at approximately 6:00 a.m. by a man wielding a large butcher knife. She was blindfolded and prodded out of the room, through an unlocked outer door from the basement, back in another unlocked entrance to the dormitory, up some stairs to the third floor and into a dormitory room, where she was raped twice at knifepoint and threatened with mutilation or death if she made any noise. Finally, her assailant led her out to the parking lot, where he abandoned her. The assailant was never identified, and the trial court found that he was an intruder in the dormitory with no right or privilege to be present there.

Strangers were not uncommon in the hallways, and there had been reports to campus security of men being present in the women's bathroom, and of nonresidents loitering in the dormitory lounges and hallways when they were not accompanied by resident students. The school newspaper had published accounts of numerous crimes in the dormitories such as armed robbery, burglary, criminal trespass and a rape by a nonstudent. Notwithstanding these reports, the doors at all of the approximately 10 entrances to the dormitory building were concededly kept unlocked at all hours, although the doors each contained a locking mechanism.

All of our discussion must not center on the rights of students who are suspected of criminal activity or violation of school rules. That is a more dramatic aspect. But we must realize that innocent, law-abiding students have a right to protection from crime and criminals.

Miss Miller sued the State of New York for her damages. The Court found that by failing to lock the outer doors of the dormitory, the State had breached its duty to protect its tenants from reasonably foreseeable criminal assaults by outsiders. In particular, the failure to lock the outer doors was found to be a proximate cause of the rape. Miss Miller was awarded $25,000 in damages.

The highest court of New York State (in *Miller v. State*, 62 N.Y.2d 506) held that while public entities enjoy a certain immunity from suit, this does not apply when there is a special relationship. And a student in a college dormitory would appear to have such a special relationship that entitles her to the same protection that would be required of any private landlord toward a tenant.

Where does all this lead us? How can the public schools be protected from marauding students wielding guns and knives and selling or using dope? More than protecting the schools and the education process itself, how can we make certain that the innocent students are protected in their desire to peacefully obtain an education that will equip them for their lifetime duties?

There appear to be two conflicting philosophies. There is a clear distinction, in both the law and underlying philosophy, between those who believe school children have all the rights and protections of the Constitution that belong to adult citizens, and those who believe that juveniles are not to be abused and do have rights, but are subject to supervision, direction and controls in the schools and on school grounds. I have given this much thought and find myself firmly in the latter camp.

I base this not only on the recently enacted initiative in which "safe schools" was a part, but in my belief that school principals and teachers stand *in loco parentis*. That is an old Latin expression that means they stand in the shoes of the parents during school hours and on school grounds. This doctrine of *in loco parentis*, which originated in *Blackstone Commentaries*, is based on the theory that a parent may delegate parental authority to the school master, who is then *in loco parentis*, and has such a portion of the power of the parent...as may be necessary to answer the purposes for which he is employed. Since parents unques-

tionably have the right to control their children's activities and conduct, and to discipline them for infractions of reasonably expected behavior, school officials inherit that right during the hours of the day when the children's custody passes from the parents to them.

In my view, a most persuasive case on this subject was rendered by the California Court of Appeal in *In re Donaldson* (269 Cal.App.2d 509). The vice principal searched a locker for narcotics and found them. The student, in trial, asserted that the school official was acting as a police agent, and therefore the seizure should be suppressed under the Fourth Amendment prohibition against unreasonable searches and seizures.

This is what the court said:

"We find the vice principal of the high school not to be a governmental official within the meaning of the Fourth Amendment so as to bring into play its prohibition against unreasonable searches and seizures. Such school official is one of the school authorities with an obligation to maintain discipline in the interest of a proper and orderly school operation, and the primary purpose of the school official's search was not to obtain convictions, but to secure evidence of student misconduct. That evidence of crime is uncovered and prosecution results therefrom should not of itself make the search and seizure unreasonable...

"The school officials, as a body and individually, have a responsibility for maintaining order upon the school premises so that the education, teaching and training of the students may be accomplished in an atmosphere of law and order. It was mandatory for the appellant to attend a full-time day school and for the full time for which the school was in session as provided under section 12101 of the Education Code. It is made mandatory upon the governing board of any school district that diligent care shall be given to the health and physical development of the pupils. (Ed. Code, § 11701.)... [U]nder the provisions of the California Administrative Code, title 5, sections 24 and 62, principals and teachers are directed to exercise careful supervision over the moral conditions in their respective schools, the use of narcotics is not to be tolerated, and students are required to comply with the regulations and submit to the authority of the teachers.

"The school stands *in loco parentis* and shares, in matters of school discipline, the parent's right to use moderate force to obtain obedience... and that right extends to the search of the appellant's locker..."

I remain convinced that the only practical rule is to deem school officials to have all the authority over pupils on school grounds, before, during and after classes that their parents have in the home. This doctrine of *in loco parentis* is deemed to be anachronistic by some, unworkable by others and out of step with these modern times by still others. Yet, to me the rule makes good sense, and it results in giving school officials the control they need to maintain order and a healthy, peaceful environment for the purpose of schooling–to teach and to learn.

I remain convinced that the only practical rule is to deem school officials to have all the authority over pupils on school grounds, before, during and after classes that their parents have in the home.

My views are not alone on this subject. The state Legislature has specifically authorized teachers, vice principals and other certificated employees of a school district to exercise "the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning." (Ed. Code, § 44807.) In the same code section, the Legislature has required that "Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess."

The rule consistent with the majority of cases on this issue is that the fruits of all searches undertaken on reasonable suspicion by school officials are admissible as evidence unless the school official was working at the direction of, in cooperation with, or under the authority of law enforcement officers. Such an approach conforms to the general rule that "The exclusionary rule will...be applied if the private citizen acted as an agent of the police or participated in a joint operation with law enforcement authorities who either requested the illegal search or knowingly allowed it to take place without protecting the third party's rights." (*Dyas v. Superior Court* (1974) 11 Cal.3d 628, 633, fn. 2; see also *People v. North* (1981) 29 Cal.3d 509, 515-516.) School authorities should not be bound to the highest standard applied to law enforcement officials unless they are acting in concert with or as agents of such officials. To hold otherwise deprives school officials of an essential tool they need to perform their statutorily mandated duty to protect the interests of school children; and weakens their authority to search on "reasonable suspicion."

The foregoing widely recognized rule is relatively simple for school officials to apply and for courts to follow, for it does not require assessment of the subjective intent of school authorities in undertaking a search of a student.

To conclude, I am not sanguine about the future. We live in troublesome, indeed hazardous times. If we are not to have untold future generations of adult criminals, we must make as certain as possible that we do not permit criminality to begin with juveniles in our schools. We do not have police officers in our classrooms. We do not have parents in our classrooms. Therefore, we must give to teachers and principals all the tools they need to preserve order in our classrooms and school grounds.

Most importantly, we must make the general public aware of the need for school safety. I commend the National School Safety Center, Pepperdine University and George Nicholson for helping to perform this useful public service. □